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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,803	08/23/2001	Lance C. Sherry	H0001333	9582

7590 08/29/2003

Honeywell International, Inc.,
Law Department AB2
P.O. Box 2245
Morristown, NJ 07962-9806

EXAMINER

SWARTHOUT, BRENT

ART UNIT	PAPER NUMBER
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2636

DATE MAILED: 08/29/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/935,803

Applicant(s)

Sherry et al.

Examiner

Brent A Swarthout

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6-16-03
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 6-16-03 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. Claims 5, 10-17 and 29-30 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for displaying a target and capture attributes, does not reasonably provide enablement for first and last capture initiation positions. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims. On pages 13-15 and figures 6 and 7 a first point to initiate capture above the aircraft is described, and then a last point to initiate capture above the aircraft is also described, which is actually closer to the aircraft than the first point. Thus, if a pilot had to initiate capture 544 feet above the aircraft, a last point of capture to avoid altitude bust would have had to have been higher than 544 feet above the aircraft, not an altitude of 294 feet which would already have been passed when the first capture point was reached.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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3. Claims 1-4, 6, 19-28 and 31-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Berlioz et al.

Berlioz discloses a pilot data display comprising current attribute indicator 9, target attribute 19, capture attribute indicator 11, the current attribute 9 is ~~altitude~~ position, the capture attribute 11 being a position corresponding to altitude rate necessary for target capture.

Regarding claim 6, Berlioz teaches use of trajectory 18B (Fig. 10C) to the target altitude.

Regarding claim 20, Berlioz teaches use of automatic pilot (col. 10, line 27).

Regarding claims 22-23, Berlioz teaches capture of ascending and descending targets (Figs. 9A, 11).

Regarding claim 24, Berlioz teaches target altitude defined by vertical speed (col. 7, lines 10-19).

Regarding claim 27, Berlioz discloses a capture region rectangular indicator 10 and an overshoot indicator 15a on sliding scale indicator 8.

3. Regarding remarks filed 6-16-03, on page 6 applicant describes initiating capture at point 515 which is closer to the target point 500 than the last point 520 to initiate capture. Since 515 is closet to target point, it appears that this should be the last point to initiate capture.

On page 8 is stated that Berlioz fails to display first capture attribute in conjunction with current attribute.

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However, on figure 3, Berlioz clearly displays first capture attribute 11 in conjunction with current attribute 9.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent Swarthout whose telephone number is (703) 305-4383. The examiner can normally be reached on M_F from 6:30 am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Hofsass, can be reached on (703) 305-4717. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

BS/ayc

August 14, 2003

Brent Swarthout
Typist April Cheeves
Art Unit 2632

Brent Swarthout

**BRENT A. SWARTHOUT
PRIMARY EXAMINER**